IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SHRI DEVINDER GUPTA,

THE CHIEF JUSTICE

AND

HON'BLE MS. JUSTICE G.ROHINI

WRIT APPEAL NO.1272 OF 2001

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/04/1998 in WP NO : 14243 OF 1997 on the file of the High Court.)

Between:

1 Secretary to Govt. (TR&B)
Secretariat Hyderabad.
2 The Executive Engineer, R&B
Nirmal Adilabad dist.
3 The Revenue Divisional Officer-cum-Land Acquisition Officer
Nirmal, Adilabad Dist.

..... APPELLANTS

AND

1 Vodde Gangu Bai W/o.Burrenna, 56 years,

2 Chinnanna S/o.Poshetty, 28 years,

3 Smt.Yerrabai W/o.Bojanna, 65 years,

4 Dattu S/o.Kareena, 45 years,

5 Muthyanna S/o.Bhojanna, 40 years,

6 Baba S/o.Narayana, 40 years,

7 Laxmibai W/o.Dev Rao, 38 years,

8 Ganapathi S/o.Hanmandlu, 65 years,

9 Dattatri S/o.Rajanna, 35 years,

10 Pachaya S/o.Pakira, 70 years,

11 Gangadhar S/o.Laxyya, 45 years,

12 Laxman S/o.Bhooma, 35 years,

13 Anodajee S/o.Dev Rao, 55 years,

14 Laxman S/o.Bhooma, 35 years,

15 Madhav Rao S/o.Maruthi, 45 years,

16 Ganapathi S/o.Gangyya, 55 years,

17 Madhav Rao S/o.Gangyya, 50 years,

18 Tanajee S/o.Sayanna, 38 years,

19 Balajee S/o.Anodajee, 25 years,

20 Ashanna S/o.Sayanna, 35 years,

21 Shanker S/o.Sayanna, 45 years,

22 B.Bhojanna S/o.Poshetty, 65 years,

23 Kistayya S/o.Avodajee, 25 years,

24 Datta Rao W/o.Bhojanna, 30 years,

25 Laxmi Bai W/o.Bhojanna, 65 years,

All are Occ: Agriculture, Residents of.Palsi Village, Kubeer Mandal Adilabad Dist.

.....RESPONDENTS

Counsel for the Appellants : THE ADVOCATE GENERAL

Counsel for the Respondents : MR.V.RAVINDER RAO

The Court Made the Following :

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ORAL ORDER (Per Hon'ble Sri Devinder Gupta, C.J)**:**

On 01-07-1997 Writ Petition No.14243 of 1997 was presented in Court by the petitioners seeking declaration against the appellants herein in not initiating acquisition proceedings qua their property situated in Palsi Village of Kubeer Mandal, Adilabad District stated to have been taken possession of by the appellants for laying a road from Bhainsa to Palsi beyond Pallaj of Maharastra State as illegal and to direct the appellants to forthwith pay compensation.

Notice was taken on behalf of the appellants and it appears from the record that counter-affidavit was not filed and therefore the learned single Judge proceeded to dispose of the writ petition in the absence of counter-affidavit on 03-04-1998.

Review Petition was filed on behalf of the appellants by the Government pleader for Transport (R & B) alleging that on 03-04-1998 when the matter was listed 'For orders', it could not be brought to the notice of the Court that there was a counter-affidavit filed by the respondent No.2 in the writ petition. Review petition was also dismissed by the learned single Judge against which the Appeal was filed along with application seeking to condone the delay. Initially the application seeking condonation of delay was dismissed, but later the said order was recalled on 22-04-2003 and the delay was condoned. It is how the Appeal was posted for hearing before us. As the appellants had failed to implement the orders of the learned single Judge dated 03-04-1998, the writ petitioners also filed C.C.No.1036 of 1999, which is pending and it is also posted before us.

We have heard the counsel for the parties and gone through the record.

The narration of aforementioned facts would suggest that writ petition was not disposed of on merits, but was disposed of on the ground that the appellants, despite opportunity had not filed affidavit in reply opposing the writ petition. We find from the record of the review petition that there is an affidavit of the Executive

Engineer (R & B), Adilabad Division, H.Q Nirmal, Adilabad District of the year 1997 opposing the writ petition on merits. We need not go into those questions at this stage, but the grounds stated in the affidavit in reply, are such which need consideration. The writ petitioners raised a question that they were deprived of the property by the State otherwise than in due course of law. They thus sought direction that proceedings be initiated under the Land Acquisition Act and pay compensation like other similarly situated owners of the neighbouring lands. The stand of the appellants in the counter-affidavit is that insofar as the writ petitioners are concerned, their case is totally different. The Writ Petition itself was not maintainable having been filed belatedly. There is a small cart track existing as shown in the map prepared in the year 1929 and for other reasons also the petitioners are not entitled to any relief. We need not go into the merits of the respective pleas. As a matter of fact, writ petition was disposed on the basis of the affidavit filed by the writ petitioners. May be that reply affidavit by the appellants was drafted in 1997. For one reason or the other it was not brought to notice of the learned single Judge when the writ petition came up for disposal. Since there is a reply affidavit on record, we are inclined to allow the Appeal by setting aside the impugned order dated 03-04-1998 with a direction to dispose of the writ petition expeditiously. Ordered accordingly.

Writ petition be posted before the learned single Judge on 26th July, 2004.

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(DEVINDER GUPTA, CJ.)

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(G.ROHINI,J.)

06th July, 2004.

Gbs/tvr

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THE HON'BLE SHRI DEVINDER GUPTA,

THE CHIEF JUSTICE

AND

HON'BLE MS. JUSTICE G.ROHINI

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WRIT APPEAL NO.1272 OF 2001

(Order of the Division Bench delivered by

the Hon'ble the Chief Justice)

06-07-2004